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DOCKET FILE COPY ORIGINAL

BY HAND DELIVERY

November 8, 1999

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Room TW-A325
Washington, D.C. 20554

Re: Comments of Teligent, Inc. on Bell Atlantic's Section 271 Application, CC Docket No. 99-295

Dear Ms. Salas:

Enclosed please find the original, six copies, and an electronic, read-only version of the Reply Comments of Teligent, Inc. in the above-referenced proceeding. Twelve copies are also being submitted to Janice Myles, Policy and Program Planning Division, Common Carrier Bureau. At the same time, paper copies are being submitted to the Department of Justice, the New York Public Service Commission, and ITS, as indicated on the attached certificate of service.

Please do not hesitate to telephone me at (703) 288-5715 if you have any questions regarding this submission. Thank you.

Sincerely,

Edward B. Krachmer
Regulatory Counsel
Teligent, Inc.

Enclosures

cc: Attached service list

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Application by New York Telephone	)	
Company (d/b/a Bell Atlantic – New York),	)	
Bell Atlantic Communications, Inc.,	)	CC Docket No. 99-295
NYNEX Long Distance, and Bell Atlantic	)	
Global Networks, Inc., for Provision of In-	)	
Region, InterLATA Services in New York	)	

REPLY COMMENTS OF TELIGENT, INC.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	)	
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Application by New York Telephone	)	
Company (d/b/a Bell Atlantic – New York),	)	
Bell Atlantic Communications, Inc.,	)	CC Docket No. 99-295
NYNEX Long Distance, and Bell Atlantic	)	
Global Networks, Inc., for Provision of In-	)	
Region, InterLATA Services in New York	)	

REPLY COMMENTS OF TELIGENT, INC.

Teligent, Inc. ("Teligent") hereby submits its reply comments in the above-captioned proceeding.[1]

I. INTRODUCTION AND SUMMARY

Based on the record before the Federal Communications Commission ("Commission") in this proceeding, the Commission should deny Bell Atlantic – New York's ("Bell Atlantic's") instant application to provide interLATA service in New York ("Application"). Bell Atlantic has failed to prove that it met its interconnection and certain other obligations under section 271 of the Communications Act of 1934, as amended,[2] in the manner required by statute and Commission precedent at the time its application was filed. Teligent urges the Commission to conclude likewise and deny the Application.

The filing of an application for in-region interLATA authority is a voluntary act – the Bell Operating Company ("BOC") has discretion to decide whether and when to seek such

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[1] Application by New York Telephone Company (d/b/a Bell Atlantic – New York), Bell Atlantic Communications, Inc., NYNEX Long Distance, and Bell Atlantic Global Networks, Inc., for Provision of In-Region, InterLATA Services in New York, CC Docket No. 99-295 (filed Sept. 29, 1999) (Application).

[2] Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified at 47 U.S.C. § 151 et seq.). 47 U.S.C. § 271.

authority.[3] When it does, however, the conditions which it must satisfy to demonstrate such authority is warranted are binary: Either the BOC meets them, or it does not. The statute leaves no room for "almost." Stated simply, Bell Atlantic has filed its current application too early. While Bell Atlantic may have "almost" fulfilled its competitive checklist obligations, it has not proven that as of the time of its application (September 29), that it had overcome serious and seemingly systemic problems in its provisioning of interconnection and other CLEC-required trunking facilities that constitute barriers to entry. Further exacerbating these deficiencies is the fact that many of these problems escape Bell Atlantic's current performance metrics, making it more difficult for the Commission, CLECs, and, most importantly, Bell Atlantic, to recognize the magnitude of these problems and to take steps to correct them. As a result, the Commission cannot approve this (or any other BOC application) until the obligations set forth under the Act have been completely fulfilled. While Teligent certainly agrees that perfection is not the standard for determining fulfillment of section 271 obligations,[4] systemic process and provisioning issues with respect to key facilities needed for CLEC local service provision cannot result in a determination of fulfillment under any reasonable standard.

II. BELL ATLANTIC FAILS TO PROVE THAT IT PROVIDES INTERCONNECTION AS REQUIRED BY CHECKLIST ITEM (i).

Teligent, as well as other CLECs, provided overwhelming evidence in initial comments that serious deficiencies exist in Bell Atlantic's provisioning of interconnection facilities required by section 271(c)(2)(B)(i). Because facilities-based CLECs, such as Teligent, have their own networks, these interconnection facilities, which provide seamless interconnection

[3] This has always been the case with "Track A" applications (section 271(c)(1)(A)) and has been the case with "Track B" applications (section 271(c)(1)(B)) since December 8, 1996. 47 U.S.C. §§ 271(c)(1)(A), 271(c)(1)(B), 271(d)(1).

[4] See Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan, Memorandum Opinion and Order, 12 FCC Rcd. 20543, 20556 (¶ 23) (1997) (Ameritech Michigan Order)

between incumbent and competitor networks, are the most critical Bell Atlantic facility or service on which such CLECs rely. Furthermore, evidence shows that the current Bell Atlantic performance metrics fail to capture the significance and scope of these deficiencies, substantially distorting Bell Atlantic's performance record.[5]

Teligent's evidence centered on a large interconnection order, 690 interconnection trunks, for its New York market and the unreasonable delays and obvious lack of cooperative give-and-take which Teligent encountered in having this order processed, not to mention provisioned, as of October 19, 1999. Events surrounding the Bell Atlantic's numerous failures associated with this interconnection order demonstrate that Bell Atlantic did not meet checklist item (i) at the time of the Application, as required by statute, and had yet to establish proven procedures to correct systemic problems in its interconnection trunk provisioning procedures. Accordingly, the Commission must reject the instant application due to the systematic defects and metric shortcomings discussed above and save review of any alleged process improvements for any future application(s) that Bell Atlantic might submit.

A. The facts, as they existed on October 19, 1999, concretely establish Bell Atlantic's failure to prove in its Application that it meets checklist item (i).

In its initial comments, Teligent promised to acknowledge publicly Bell Atlantic efforts to improve its provisioning intervals and processes with respect to Teligent.[6] True to its word, Teligent acknowledges here that since it filed its initial comments on October 19, 1999, Bell Atlantic has made attempts, of varying significance and effectiveness, to improve its treatment of this particular Teligent interconnection facility order, although Teligent is unaware of any

[5] See, e.g., Teligent Comments at 11.

[6] Teligent Comments at 4, n.4.

change in Bell Atlantic's flawed process.[7] Regardless, this is not relevant to its instant application – the story must end on October 19, 1999 and no later.

A BOC's application for in-region interLATA authority cannot be treated as a moving target. The Commission has made it abundantly clear with regard to facts pertaining to allegations made by commenters, such as those raised by Teligent in its initial comments. In the Ameritech Michigan Order, the Commission concluded that:

> A BOC may submit new factual evidence if the sole purpose of that evidence is to rebut arguments made, or facts submitted, by commenters, provided the evidence covers only the period placed in dispute by commenters and in no event post-dates the filing of those comments. . . .[U]nder no circumstance is a BOC permitted to counter any arguments with new factual evidence post dating the filing of comments.[8]

The Commission goes on to note in that order that allowing the introduction of such new evidence impairs affected parties' procedural rights to comment on the new evidence, the ability of the state commission and of the Attorney General to meet their respective statutory consultative obligations, and the Commission's ability to evaluate the credibility of such new information.[9] The Commission has applied this principle in both the Ameritech Michigan Order and the Second BellSouth Louisiana Order to situations in which the applicant BOC attempted to rely on performance improvements that had taken place after the dates of their respective applications.[10]

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[7] Teligent hopes that Bell Atlantic has begun to address the process issues that led to the numerous and on-going problems with this order to ensure they do not reoccur and to ensure this issue is not a factor in any future section 271 application.

[8] Ameritech Michigan Order, 12 FCC Rcd. at 20571 (¶ 51) (emphasis in original).

[9] Id. at 20572-73 (¶ 53).

[10] Id. at 20571-72 (¶ 51) (Refusing to consider evidence concerning post-application date improvements made in Ameritech's interconnection provisioning); Application of BellSouth Corp. for Provision of In-region, InterLATA Services in Louisiana, 13 FCC Rcd. 20599, 20670 (¶ 106) (1998) (Second BellSouth Louisiana Order) (Noting that it would not consider post-application date improvements in BellSouth's operations support systems).

Similarly, while Bell Atlantic's efforts to address the specific examples of deficiencies raised by Teligent in its initial comments are too late to save this application, if they continue on the course that Teligent believes that they may be headed, such issues may not be fatal to future Bell Atlantic applications. This notwithstanding, Bell Atlantic's failure, as of October 19, 1999, to provide Teligent with the interconnection trunks that it ordered on August 5, 1999 (prior to the filing of its application) and the related failure of Bell Atlantic's current performance metrics even to measure relevant performance in this regard,[11] constitutes a failure to provide interconnection consistent with sections 251(c)(2) and 252(d)(1)[12] and, thus, is sufficient grounds for denying the Application.

Beyond this, Teligent's initial comments (as well as those of Allegiance Telecom, Inc.; e.spire Communications, Inc./Net 2000 Communications Services; Focal Communications Corporation; Omnipoint Communications, Inc.; and Prism Communications Services, Inc.) discuss in great detail systemic problems not only with Bell Atlantic's interconnection facility provisioning process but, equally as important, deficiencies in Bell Atlantic's process for provisioning other trunking facilities, as well.[13] These deficiencies, which are reiterated below in Section III of these Reply Comments, include failures to provide Firm Order Commitments (FOCs) and Design Layout Records (DLRs), just as Bell Atlantic fails to provide these for interconnection trunks.[14]

The fact that Bell Atlantic's poor interconnection facility provisioning performance prior to October 19, 1999 took place when its performance on such large orders was not being

[11] Teligent Comments at 11, Tab 2 (Lissemore Aff.).

[12] 47 U.S.C. § 271(c)(2)(B)(i).

[13] Teligent Comments at 11; Allegiance Telecom, Inc. Comments at 11-12; e.spire Communications, Inc. (e.spire)/Net 2000 Communications Services, Inc. (Net 2000) Comments at 16-22; Focal Communications Corporation (Focal) Comments at 3-9; Omnipoint Communications, Inc. (Omnipoint) Comments at 5-13; Prism Communications Services, Inc. Comments at 20-21.

monitored carefully, as it was with its provision of unbundled network elements or resale provisioning, is particularly significant. It may very well represent how Bell Atlantic will operate when its performance in other regards is not under such scrutiny, such as after any grant of a 271 application.

Any Bell Atlantic process and provisioning improvements which may have occurred after October 19, 1999 (and may still occur before the conclusion of this proceeding)[15] do not change the fact that Bell Atlantic's performance metrics, as of the filing date of the Application (and at present, as far as Teligent is aware), fail to capture facts relating to large interconnection facility orders, such as Teligent's. As Teligent discussed in its initial comments, these gaps in Bell Atlantic's performance metrics include the failure to track adequately large interconnection trunk orders and Bell Atlantic's unilateral and arbitrary manipulation of the ordering process to enable it to claim "no backlog" of these facilities.[16]

The simple fact remains that, as of October 19, 1999, Teligent had not received a single FOC for its 690-circuit interconnection trunk order which had been pending for over two-and-a-half months (not to mention the facilities themselves).[17] Several of the breakdowns in Bell Atlantic's provisioning process were to blame for this and serve as evidence of systemic problems in Bell Atlantic's processes such as arbitrary, vague, and ever-changing large and

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[14] Teligent Comments at 18-19, Tab 2 (Lissemore Aff.).

[15] Improvements in Bell Atlantic's processes, of course, must be frozen as of the date of its application, September 29. Teligent provides the October 19, 1999 limitation with respect to facts pertaining to Teligent's August 5 interconnection trunk order.

[16] Id. at 11.

[17] As noted in Teligent's initial comments, Teligent had not received FOCs for its order placed on August 5 as of October 19, 1999. Teligent Comments at 10, n.26. Confronted with allegations of several commenters in their October 19 comments regarding its interconnection facility provisioning failures, Bell Atlantic transmitted FOCs for most of Teligent's circuits on October 29, 1999. This action, of course, is irrelevant to the instant application. It should be noted, however, that transmittal of these FOCs does provide conclusive evidence that Bell Atlantic's 8:13 p.m. e-mail on the eve of the Teligent comment due date, i.e., October 18, 1999, did not serve as a FOC. See Teligent Comments at 10, n.26.

"project" order standards[18] and erratic FOC transmittals,[19] rather than any established requirements.[20]

Teligent hopes that the evidence it and others have presented in this proceeding, results in a complete Bell Atlantic overhaul of its interconnection trunk provisioning process and applauds any (albeit legally irrelevant for the purpose of this instant application) post-October 19, 1999 efforts that Bell Atlantic may make in this regard. As Teligent has stated previously, its goal is not to keep Bell Atlantic out of the interLATA market in New York. Rather, Teligent's singular goal is to receive statutorily-required non-discriminatory access to Bell Atlantic bottleneck interconnection (and other) facilities essential for competitive local entry. Teligent looks forward to working cooperatively with Bell Atlantic in improving such processes.

III. BELL ATLANTIC DOES NOT MEET COMPETITIVE CHECKLIST ITEM (ii) WITH REGARD TO ENHANCED EXTENDED LOOPS ("EELs").

As discussed in Teligent's initial comments, in Teligent's experience as of October 19, 1999, Bell Atlantic has failed in its fundamental obligation to provide the facilities necessary for Enhanced Extended Loops ("EELs"), an unbundled network element that Bell Atlantic is obligated to provide.[21] As a result, Bell Atlantic's application fails to satisfy the requirements of section 271(c)(2)(B)(ii), which, by requiring compliance with section 251(c)(3), mandates that

[18] See, e.g., Teligent Comments at 10-11, Tab 1 (Sullivan Aff.).

[19] See, e.g., id.

[20] See, e.g., id.

[21] Teligent Comments at 13-19 (describing, *inter alia*, Bell Atlantic's statutory obligations concerning the EEL and Teligent's use of the EEL). With regard to the Commission's requirements, Teligent's use of the EEL conforms with the "specific circumstances" recently discussed in the UNE Remand Order as triggering an incumbent LEC's obligation to provide access to the EEL. In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, ¶ 480 (rel. Nov. 5, 1999) (UNE Remand Order); Teligent Comments at 13-16.

the carrier provide unbundled, nondiscriminatory access to its network and the recombination of such elements.[22]

Teligent's initial comments make clear that as of October 19, 1999, Bell Atlantic had dozens of outstanding Teligent orders for these facilities.[23] In addition, as discussed above and in Teligent's initial comments, Bell Atlantic's process for provisioning facilities constituting EELs is fraught with deficiencies such as failures to provide Firm Order Commitments (FOCs) and Design Layout Records (DLRs). Teligent does not appear to be alone in its difficulties receiving these facilities from Bell Atlantic.[24] As significant, Bell Atlantic's performance measures fail to capture these problems and EEL provisioning problems, generally.[25] While Bell Atlantic may have made some progress on the process used to place these orders since October 19, as addressed above in the context of interconnection facilities, such progress is legally irrelevant to this proceeding.

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[22] 47 U.S.C. § 271(c)(2)(B)(ii); see AT&T v. Iowa Utils. Bd., 119 S. Ct. 721, 736-38 (1999) (reinstating Rule 51.315(b) of the Commission's rules, which prohibits an ILEC from separating already-combined elements. 47 C.F.R. § 51.315(b)).

Section 51.315(b) of the Commission's rules has been reinstated since January, although the issue of which network elements the Commission requires the ILECs to unbundle, including certain UNE combinations, such as the EEL, was not settled until recently. Nonetheless, Bell Atlantic committed to the Chief of the Common Carrier Bureau in February that it would continue to provide the seven UNEs identified by (vacated) Section 51.319, pending the outcome of the Commission's UNE Remand Order. Letter from E.D. Young III, Bell Atlantic, to L. Strickling, Chief, FCC Common Carrier Bureau, of February 8, 1999, at 1. Thus, Bell Atlantic has had an ongoing obligation as of the date of its application to provide existing combinations of UNEs in accordance with the law and its public commitments.

[23] Teligent Comments at 16.

[24] See, e.g., Focal Comments at 3-9, Omnipoint Comments at 5-13.

[25] See, e.g., Teligent Comments at 18-19. These provisioning delays and circuit failure delays can preclude Teligent's ability to sell service to certain customers or provision service to already-acquired customers, causing losses in revenue and goodwill. In its initial comments, Teligent also discusses how this loss of revenue (and the accompanying economic losses attributable to resolving these issues) affects Teligent's bottom line. Such failures also add uncertainty to Teligent's buildout plans. Teligent Comments at 18, Tab 2 (Lissemore Aff.) at 4.

IV. Teligent, as well as other CLECs, should not be penalized for not participating formally in the state-level section 271 proceeding.

In its comments submitted on November 1, 1999, the Department of Justice ("DOJ") recognized the significance of the interconnection trunk provisioning issue implying that the CLECs' stated facts on this issue, if true, would cement the case against Bell Atlantic's application.[26] The fact that the DOJ did not independently verify the facts presented by the CLECs in their comments and affidavits with respect to interconnection trunks, nor conclusively opine on the veracity of the CLEC showings, must not and should not bear on the Commission's conclusions with respect thereto. Nor can the Commission defer entirely to the New York Public Service Commission's ("PSC's") determinations in its comments on this issue. Indeed, as demonstrated by Teligent and other CLECs, it only became apparent that many of the interconnection trunk-related issues were seemingly insurmountable by Bell Atlantic at the very end of (or after) the New York pre-filing proceedings.[27]

Moreover, in its initial comments, Teligent explained in detail the reasons that it did not participate in the New York PSC's section 271 proceeding – initially because it had not been in the market long enough to experience significant difficulties when the proceeding was first opened and later because several Bell Atlantic personnel, including one of Bell Atlantic's affiants in this proceeding, Paul Lacouture, had made (to date, largely unkept) future performance promises upon which Teligent relied. It is worth noting, however, that Teligent's order for the 690 interconnection trunks discussed above was not even been placed until August 5, shortly before the New York PSC issued its relevant decision. When Teligent placed its order on August 5, it had no way of knowing then, particularly shortly before Bell Atlantic's publicly-

[26] See DOJ Evaluation at p. 10-11, n.20.

[27] Teligent's order was placed on August 5, 1999. e.spire seems to be in a similar circumstance, reporting significant interconnection facility difficulties with Bell Atlantic occurring too late in the New York PSC's process. See e.spire/Net 2000 Comments at 21, n.24.

stated plans to file its section 271 application at the Commission, that it would encounter such significant and untimely delays. Surely the Commission does not wish to freeze facts at a point in time that the relevant state commission issues orders, based largely on facts and testimony compiled several months prior. Indeed, new entrants attempt to enter the market every month, and those that do are in various stages of their network build-out. To fail to consider the experiences of these entrants serves to ignore significant events that transpire in the intervening time before the application is filed. Teligent believes that the Commission is obligated to consider such events.

Admittedly, Teligent sought to resolve its issues using business solutions rather than regulatory intervention and believed Bell Atlantic's provisioning promises would flow through to all of Teligent's trunking orders.[28] In reliance on Bell Atlantic's promises, made at a crucial time in the New York proceeding, Teligent gave Bell Atlantic an opportunity to correct its provisioning problems which Teligent rather than air them before the New York PSC. While Bell Atlantic had failed to follow through on those promises as of October 19, 1999, Teligent continues to believe that BOCs and CLECs should be encouraged to resolve their disputes, at least initially, through private negotiation rather than in a public forum, if possible.

In retrospect, however, had Teligent realized that it might be penalized for attempting to resolve its provisioning issues through negotiations with Bell Atlantic, it may have decided to pursue a different approach. This should not occur, and it never occurred to Teligent that it would. If the Commission were to decide to give short shrift to or ignore Teligent's interconnection and other trunking issues merely because they were not pursued further in New York after they were initially raised, the Commission would implicitly discourage parties from

[28] Teligent Comments at 21-23.

entering into such negotiations and further polarize the already controversial state and federal 271 proceedings.

IV. CONCLUSION

For all of the foregoing reasons as well as those set forth in its initial comments, Teligent respectfully urges the Commission to deny Bell Atlantic's instant application.

Respectfully submitted,

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Dated: November 8, 1999

CERTIFICATE OF SERVICE

I, Edward B. Krachmer, do hereby certify that on this 8th day of November, 1999, copies of the foregoing Reply Comments of Teligent, Inc. on Bell Atlantic's Section 271 Application, CC Docket No. 99-295, were mailed, first class postage prepaid, unless otherwise indicated, to the following parties:

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